

REMARKS

Response to Terminal Disclaimer

Claim 37 was rejected by the Examiner on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 12 of U.S. Patent No. 6,679,851.

Claims 38 and 39 were rejected by the Examiner on the ground on nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 12 of U.S. Patent No. 6,679,851 in view of Gough et al. (U.S. Pat. No. 5,683,384).

Claims 44-48, 51, 66-70, and 73 were rejected by the Examiner on the ground on nonstatutory obviousness-type double patenting as being unpatentable over claims 25 and 26 of U.S. Pat. No. 6,679,851 in view of Gough et al. ('384).

Claims 52-54, and 74-76 were rejected by the Examiner on the ground on nonstatutory obviousness-type double patenting as being unpatentable over claims 25 and 26 of U.S. Pat. No. 6,679,851 in view of Gough et al. ('384) and further in view of Mulier et al. (U.S. Pat. No. 5,431,649).

In response applicant's counsel has filed herewith a Terminal Disclaimer (By Attorney) directed to the '851 patent.

Response to Claim Rejections Under 35 U.S.C. §102

Claims 37-39 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by Gough et al. ('384).

The Gough et al. patent describes an ablation device having a primary antenna (14) and a plurality of secondary antennas (16). Some of the secondary antennas may be configured to provide an anchoring function. The distal tip of the Gough et al device

is provided with a thermal sensor (24) such as a thermocouple. An indication is given in column 6, lines 64-65 of Gough et al. ('384) that the sensors 24 need not be thermal sensors, but no other sensed parameter is described other than temperature or impedance.

The Gough et al. reference does not teach, disclose or suggest the use of radiation detectors which are disposed within the accessing device to locate a radioactive material in a lesion site. The sensors of the Gough et al. device are configured to measure temperature and/or impedance to permit monitoring in order to ensure that the area being ablated is not over heated. The present device, on the other hand, is configured to detect radiation coming from a radioactive material. The Examiner has cited no portion of the Gough et al. patent teaching or suggesting radiation detectors. The temperature sensing is by contact.

Applicants have made further amendments to claim 37 for the purposes of clarification which call for the radiation sensor to be within the inner lumen of the shaft of the device. Additionally, the anchor member is described as having a retracted configuration and an extended configuration to facilitate anchoring the device adjacent to the node to be accessed.

In as much as the Gough et al. reference does not teach every feature of the claimed invention, the reference cannot anticipate the invention of claims 37-39.

Response to Claim Rejections Under 35 U.S.C. §103

Claims 25-36 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Gough et al. in view of Ritchart et al (U.S. Pat. No. 5,810,806).

However, applicants have cancelled these claims without prejudice so the rejection is moot.

Claims 40-43 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Gough et al. in view of Mulier et al ('649). Claims 40-43 are dependent upon independent claim 37, which as discussed above, is directed to a patentable invention therefore claims 40-43 should also be patentable.

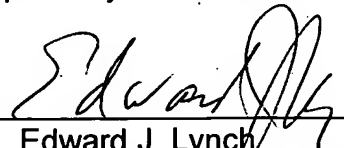
Response to Allowable Subject Matter

The applicants note with appreciation the Examiner's indication that Claims 49, 50, 71 and 72 are directed to patentable subject matter and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, applicants believe that the independent claims from which these claims depend are allowable so that further amendments to claims 49, 50, 71 and 72 are not necessary.

Conclusions

The applicants believe the pending claims are patentable over the cited references. Reconsideration and an early allowance are earnestly solicited.

Respectfully submitted,

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